IN THE

Supreme Court of the United States

October Term, 1972
No. 71-1456

SALYER LAND COMPANY, a California corporation, C. EVERETTE SALYER; FRED SALYER; LAWRENCE ELLISON; and HAROLD SHAWL,

Appellants,

vs.

TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district,

Appellee.

On Appeal from the United States District Court for the Eastern District of California.

BRIEF FOR THE APPELLEE.

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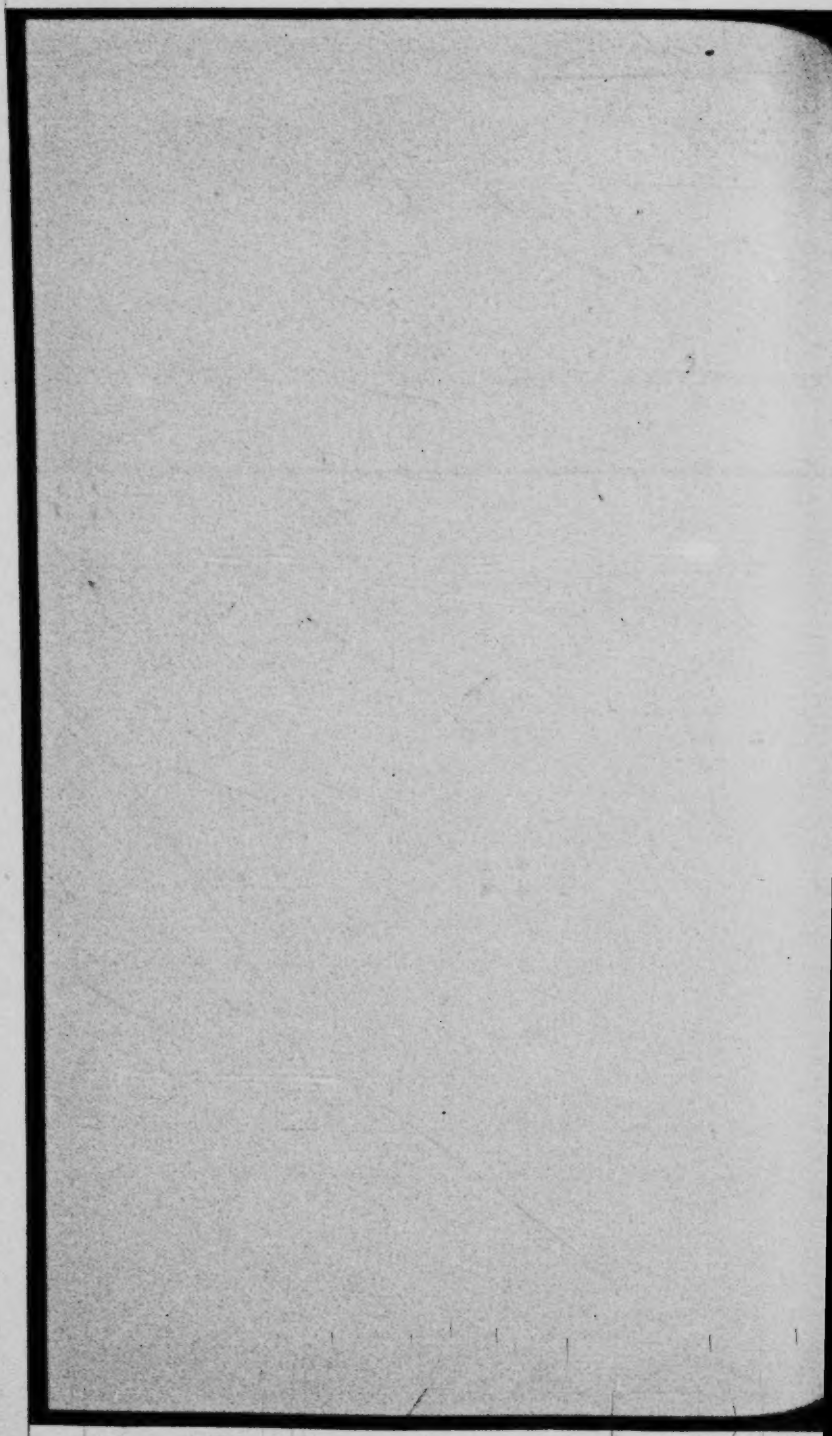

SUBJECT INDEX

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BRIEF FOR THE APPELLEE.

Status of the Case.

Appellants (a corporate farmer in the Tulare Lake Basin of California, two individual officers and shareholders of the corporation, and an employee of the corporation residing in the Basin) sought in the United States District Court For the Eastern District of California, a judicial declaration that the formula adopted by the California legislature for the election of directors of a Water Basin Storage District, a special purpose district formed for the purpose of developing and im-

proving the supply of water for agricultural purposes within the District, is discriminatory and in violation of the equal protection clause of the Fourteenth Amendment. The Act, pursuant to which the District was formed, apportioned voting rights among landowners in proportion to the assessed value of their holdings in the District.[1]

A three-judge court was convened to hear the case.[2] The Court in a Memorandum and Order dated February 17, 1972, signed by United States District Judges M. D. Crocker and Robert H. Schnacke, held that apportionment of voting rights among landowners in accordance with the California law did not violate the Constitution in that (1) the District performed no governmental functions of general concern to the populace and provided no service to the general public as found by the Court in *Burrey v. Embarcadero Municipal Improvement District*, 5 Cal. 3d 671 (1971), (2) the State of California has a compelling interest in the development of its water resources, and limiting the vote to landowners is necessary to further this state interest because it is doubtful if the District would have been formed unless the persons paying the expenses could control them, and (3) while the activities of

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[1]The specific statutes attacked by Appellants are Sections 41000 and 41001 of the California Water Storage District Law (Water Code, Sections 41000 and 41001) as follows:

"Section 41000. Qualification. Only the holders of title to land are entitled to vote at a general election.

"Section 41001. Vote in precinct; number of votes. Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars ($100), or fraction thereof, worth of land, exclusive of improvements, minerals, and mineral rights therein, in the precinct."

[2]The three-judge court was convened pursuant to 28 U.S.C., Section 2284.

the District affect the economy of the area, which is of interest to the residents who are not landowners, this is an indirect interest and not a direct primary and substantial interest that would entitle them to vote. For these reasons Judge Crocker and Judge Schnacke considered the voting procedure provided by California law for special purpose districts such as the Tulare Lake Basin Water Storage District to be proper. The two judges also held that the statutory method whereby the District was divided into divisions did violate the Constitution, and the District was ordered to submit a plan to correct the malapportionment. No appeal is taken from this holding.

The third judge, Circuit Judge James R. Browning, concurred in part and dissented in part from the Memorandum and Order of the majority. He agreed that the District performs no governmental functions and provides no service of direct concern to residents of the District. Further, he agreed that the State of California has a compelling reason for excluding from the vote nonresidents of the District who neither own nor lease land within the District. However, he disagreed in part with the majority when he concluded that lessees of land, as well as landowners, should be permitted to vote, and that weighted voting as provided by the California statute was improper.

The Memorandum and Order of Judge Crocker and Judge Schnacke is printed at page 103 of the Appendix filed herein. The Opinion of Judge Browning is printed at page 108.

Appellants ask this Court to overturn the Memorandum and Order of the three-man court.

The Facts.

In 1921, the California legislature enacted the California Water Storage Act in order to provide a flexible response to water problems on a local basis.[3] The legislation was enacted in furtherance of a compelling state interest.[4]

Water storage districts under the Act are formed for the limited purpose of storing and distributing water for irrigation.[5] They are formed by owners holding title to a majority in value of the land within the District, or by not less than 500 title holders whose holdings constitute at least ten percent in value of the land.[6] The landowners petition the California Department of Water Resources for its approval. The petition states the boundaries of the proposed district and a description of the land, the proposed source of water supply, the location proposed for the storage of water for irrigation, any drainage or reclamation connected with the project, any incidental development of hydroelectric energy, the nature of the proposed works, and a prayer that the territory be formed into a water storage district.[7] The Department holds a hearing after notice and makes an order containing a determination of the practicability, feasibility, and utility of the proposed

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[3]The Statutory Law of the State of California is incorporated into codes. Laws pertaining to water and entities concerned primarily with water are in the California Water Code. The provisions of California law dealing with water storage districts are contained in California Water Code, Sections 39000-48401, inclusive.

[4]Conservation, distribution, and control of the water supply are major State concerns. See, *e.g.*, California State Constitution, Article XIV, Section 3; California Water Code, Sections 100, 104, 105.

[5]California Water Code, Section 43000.

[6]California Water Code, Section 39400.

[7]California Water Code, Section 39425.

project, establishes the boundaries of the district, specifies the sources of water and places of storage, and estimates of the cost of the proposed project.[8] The Department is authorized to make all necessary studies, examinations, surveys, plans and estimates of cost. The question of formation is then submitted to an election, in which only landowners, or their representatives, may vote.[9] If the majority vote is favorable, the Department declares the district formed. The qualifications of voters at a formation election are the same as those for general elections, that is, only holders of title to land may vote and each voter may cast one vote for each $100 worth of his land.[10] Landowners may vote in person or by proxy.[11] Fiduciaries and corporations may vote if they represent or hold title to land.[12]

After its formation a water storage district operates only through the device of a district project which has been approved by the Department of Water Resources of the State of California.[13] The issuance of bonds to finance such projects is under the general supervision of the State Treasurer.[14] The Board of Directors of the district makes a report of each district project and its estimated cost to the State Treasurer of the State of California.[15] The State Treasurer makes an independent investigation of the project and enters an order either

[8]California Water Code, Sections 39775-39800.

[9]California Water Code, Section 41000.

[10]California Water Code, Section 41001.

[11]California Water Code, Section 41002.

[12]California Water Code, Section 41003.

[13]California Water Code, Section 42200, *et seq.*

[14]California Water Code, Sections 42275, *et seq.* (Amended 1971 substituting State Treasurer for District Securities Commission.)

[15]California Water Code, Section 42276.

declaring the project abandoned or approving the report of the Board.[16] If the State Treasurer approves the report, the Board calls a special election on the project.[17] To adopt a project it is necessary that there be a favorable majority of all votes cast and of the qualified voters who voted at the election.[18]

After the adoption of a project, involving as it does the action of the Board, the State Treasurer, the Department of Water Resources, and the landowners of the District, the State Treasurer appoints three commissioners, none of whom can have any interest, directly or indirectly, in any land in the District, to assess the cost of the project and apportion the cost in accordance with the benefits that will accrue to each tract of land held in separate ownership by reason of the expenditure of the money and the completion of the project.[19]

The Commissioners prepare an assessment roll which delineates the assessment charges to each tract of land and states the nature of the benefit to each tract of land. Should objections be filed, the Commissioners appoint two disinterested persons to sit with the President of the Board of Directors as an "adjustment board" to hear the objections. The charges set forth in the assessment roll, certified by the Secretary or approved by the adjustment board if need be, constitute a lien on the land prior to all other liens, except state, county, and municipal taxes and assessments or levies assessed by or under statutory authority.[20]

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[16]California Water Code, Sections 42300-42301.
[17]California Water Code, Sections 42325, *et seq.*
[18]California Water Code, Sections 42355-42550.
[19]California Water Code, Section 42355.
[20]California Water Code, Sections 46175, *et seq.*

In addition to the formation election and project elections, there are general elections at which directors of the district are elected.[21] The duties of the board of directors are carefully stated by the California legislature. Specifically, the board's functions are limited to examining proposed projects, estimating costs, and reporting thereon.[22]

The board has no power to legislate. It only performs carefully prescribed administrative functions concerned with the storage and distribution of water for irrigation purposes.

The Tulare Lake Basin Water Storage District encompasses approximately 193,000 acres, most of which is located in the Tulare Lake Basin. Tulare Lake Basin in turn is a shallow depression of about 270,000 acres in area located west of Corcoran, California.[23]

The Basin is subject to flooding from time to time, principally from the flows of the Kings, Kaweah, Tule or Kern Rivers or combinations thereof. For example, in 1969 one of the largest floods in history inundated portions of the Basin, flooding over 88,000 acres of

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[21]California Water Code, Sections 41300, *et seq.*

[22]California Water Code, Section 42200 reads as follows:

"*Duties of board*

Upon the organization of a district, the board shall make or cause to be made all examinations, surveys, * * * plans and specifications, and estimates of costs for the acquisition, appropriation, diversion, storage, conservation, and distribution of water, any drainage or reclamation works connected therewith, and the generation of hydroelectric energy incident thereto, and the sale and distribution thereof, as may be necessary or requisite to enable the board to ascertain and estimate the requirements and works necessary for the purpose of the district, and the probable cost and to make a report."

[23]A map of the basin showing the boundaries is Defendant's Exhibit N.

rich farmland.[24] At the peak of the flood, 100 percent of divisions 3, 5 and 6, 56 percent of division 4 and 28 percent of division 7 were under water.

Because of the recurrent floods, very few people live in the District. At the present time, there are 77 men, women and children living in the District. Many of the families are permanent or semi-permanent employees of Westlake Farms, Inc., which owns approximately 15,000 acres of land on the west side of the Basin. For example, 38 people reside at that company's Nevada Avenue Labor Camp; 6, at its Kettleman City Labor Camp; 10, at its headquarters complex; and 12, at its South Ranch headquarters, making a total of 66 people affiliated with Westlake Farms, Inc. living in the District. In addition, 2 people live at the El Rico headquarters of the J. G. Boswell Company and 4 at that company's Homeland headquarters. Four people live at the Southlake Farms headquarters, and Lawrence Ellison, one of the plaintiffs in this action, lives in a home owned by plaintiff Salyer Land Company at its North Central headquarters.[25]

Among these people, only the members of the Howe families, who are the owners of Westlake Farms, a corporation, own land in the District.

There are 307 landowners in the District. The pattern of land ownership varies greatly in different por-

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[24]A photograph of the basin showing the flooded area on October 5, 1969, is Defendant's Exhibit O, printed following page 88 of the Appendix.

[25]A map showing the location of place indicated, except Westlake Farms South Lake headquarters is attached to Defendant's Exhibit P, which is printed in the Appendix.

tions of the District. For example, in the lower portions the land is held, for the most part, in sizable ownerships. However, in the southeastern quadrant, in an area sometimes referred to as to the Homeland District, there are many small ownerships. This pattern is due to the fact that some years ago there was some speculation in oil drilling in the area and small ownerships were sold by the promoters of this venture. These small holdings are all leased for farming to larger operatots, who usually vote these smaller holdings by proxy.[36]

The District provides no public services, such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed and operated by a municipal body. There are no towns, shops, hospitals, fire departments, police, buses, trains or other facilities of a type designed to improve the quality of life within the boundaries of a governmental entity.

The Tulare Lake Basin Water Storage District was divided into eleven divisions, and a Director was elected for each division by its landowners, with each landowner receiving one vote for each $100 worth of his land. It is these divisions that the three-judge court determined to be improper and which will be corrected by that court.

The District has adopted four projects since its formation in 1926. Each of the projects was limited to

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[36]Defendant's Exhibit Q is a schedule showing the relative number of land holdings. It is printed in the Appendix following page 88.

the District's primary function of water storage and distribution. Each project involved a multi-million dollar expenditure to be paid by assessments on the land benefited.[37]

The Question Before the Court.

Did the State of California act within constitutional limits when it granted the franchise in water storage districts only to landowners and weighed each landowner's vote in proportion to the value of the land owned by him?

[37]Each District project is described in the Appendix beginning at page 75.

ARGUMENT.

The Appellants contend that the classification enacted by the California legislature as to who shall be permitted to vote in a water storage district general election is unconstitutional for two reasons. First, it is contended that the classification discriminates unconstitutionally against non-landowning residents in the District and against lessees of land within the District. Second, it is contended that even if it should be deemed constitutionally permissible to limit the franchise to landowners, it is unconstitutional to permit one landowner to cast more ballots than another because he owns land worth more than the latter.

The Appellants base their two contentions upon the one man, one vote decisions of this Court, particularly those which have struck down statutes which conditioned the right to vote upon the ownership of property, *e.g., Kramer v. Union Free School Dist.*, 395 U.S. 621 (1969); *Phoenix v. Kolodziejski*, 399 U.S. 204 (1970). However, Appellants do not mention that in each of these decisions the Court has emphasized that the election in question was concerned with matters of general concern to the populace as a whole and that all citizens, not just property owners, would be required to bear the cost of the governmental function in question. The Court found no overriding reasons which established that the legitimate interests of the state would be furthered by limiting the electorate to property owners. Therefore the statutes in question were held unconstitutional. On the other hand, in these decisions, the Court has recognized that there may be areas in which a state might limit the franchise to those "primarily interested" or "primarily affected" by a given set of circumstances (*Kramer, supra*, p. 632). In *Hadley v.*

Junior College District, 397 U.S. 50, at page 54, the Court stated:

> "It is of course possible that there might be some case in which a State elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with Reynolds, supra, might not be required . . ."

and at page 55:

> "And a State may, in certain cases, limit the right to vote to a particular group or class of people. As we said before, 'viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the constitution to prevent experimentation.'"

The question then is whether the State of California acted within constitutional limits in granting the franchise in water storage district elections only to landowners, and further, weighing a landowner's vote in proportion to the value of the land owned by him. The Supreme Court of Califonia ruled on this question in 1923, shortly after the enactment of the water storage district act. In *Tarpey v. McClure*, 190 Cal. 593 (1923), that Court upheld the constitutionality of the Act, stating at page 606:

> "By this and like provisions, the legislature is not dealing with elections, with suffrage, or with the ballot, within the meaning of the constitution and the election laws of the state. The formation of this and similar districts is a function pertaining

purely to the legislative branch of the government. Wherefore it may do so by giving such persons as it may think best an opportunity to be heard . . ."[28]

The directors of a California water storage district, contrary to the statements in Appellants' brief, exercise virtually no governmental power whatsoever. Except for administrative and housekeeping chores, all they can do is investigate and report on the feasibility and cost of a district project.[29] They have no power to legislate. They are not comparable to elected officials in the typical unit of local government such as members of a city council, school board, county board of supervisors in whom is invested a considerable amount of governmental power to act in areas of general concern to all citizens and who have the power to levy taxes, make assessments or even enact criminal statutes. Under such circumstances, this Court has held that the one man-one vote cases do not apply. *Sailors v. Board of Education*, 387 U.S. 105 (1967).

In *Kramer*, this Court held that a statutory classification which disenfranchises persons otherwise qualified to vote must meet the following tests: (1) The classification must be necessary to promote a "compelling state interest" and (2) The statute must be drawn with such precision that a citizen having a direct and primary interest in the matter voted upon is not excluded. Following *Kramer*, the three-judge court in this case held unanimously that California had a compel-

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[28]Other California cases also support the reasoning of *Tarpey v. McClure. Barber v. Galloway*, 195 Cal. 373. *People v. Reclamation Dist. No. 551*, 117 Cal. 114, 123-124.

[29]California Water Code, Section 42200, as amended 1969, quoted footnote 22, *supra*.

ling state interest in the management of its water, and a majority held that it was proper for the State to limit the franchise in water storage district general elections to landowners, since they are the ones directly involved who bear the costs.[80]

A recent California case discussed *Kramer* and held that voter classifications similar to those attacked here are necessary to promote a compelling state interest and did not exclude citizens having a direct and primary interest in the vote. In the California case, which is entitled *Schindler v. Palo Verde Irrigation Dist.*, 1 Cal.App.3d 831 (1969), the Court said:

> "The state clearly has a compelling interest in the reclamation of waste lands through flood protection, drainage and irrigation works. (See *People v. Sacramento Drainage Dist.*, 155 Cal. 373, 379-381 [103 P. 297].) In many circumstances, such as undoubtedly existed in Palo Verde Valley in 1923, the lands to be reclaimed are virtually uninhabited. The grant of election franchise to landowners, resident and nonresident, corporate and individual, is necessary to 'further a compelling state interest.' Absent the voting qualification provided by the Act, it is doubtful that the District could have been formed or functioned. The activities of the District no doubt affect the economy of the area and to that extent District affairs may be of interest to all inhabitants irrespective of land ownership, but such general interest, standing alone, cannot be said to constitute, as a matter of law, a direct, primary and substantial interest entitling all inhabitants to

[80]California Water Code.

vote. Such general economic interest is indirect, not primary and substantial. (See *Atchison etc. Ry. Co. v. Kings County Water Dist.*, 47 Cal. 2d 140, 144-145 [302 P. 2d 1].)

"Since the benefits and burdens accrue to each landowner in proportion to the extent of land owned, the grant of franchise in proportion to the assessed value of land ownership fairly distributes voting influence among those primarily and directly interested in direct proportion to the stake each has in the District. We conclude that the existing method of allocating voting rights among land owners satisfies the constitutional standards prescribed by *Kramer*.

"In view of the conclusion we have reached, it is unnecessary to consider in detail the alternative voting rights demanded by plaintiff. Absent constitutional infirmity in the existing statute, there is no justification for judicial fashioning of the alternative rights demanded. * * *"

Other states agree with California. In *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 490 P.2d 1069 (1971), the Supreme Court of Wyoming held that the one-man, one-vote concept of equal protection will not be applied to entities such as watershed improvement districts, soil conservation districts, and irrigation districts. In *Wallegham v. Thompson*, 185 N.W.2d 649 (1971), the Supreme Court of North Dakota held that a statutory formula for voting rights, in proportion to an anticipated assessment to which land in a drainage district may be subjected, fairly and properly distributed voting influence among the landowners, as those "landowners who own more land will be burdened more and have more at stake."

In *Hebert v. Police Jury of Parish of Vermilion, La.*, 245 So.2d 349, the Supreme Court of Louisiana held that it was proper in a bond election involving purely local roads to limit participation in the election to property owners whose property would benefit and who would pay for the roads.

The State of California Acted Permissibly When It Excluded Residents of the District From the Electorate.

Appellee suggests that it is entirely proper for the legislature of the State of California to enact a law which provides a method whereby a group of landowners may band together to improve the management of water which they receive from a common source. They are *directly* affected by and concerned with bringing water to their land. The interest of a non-landowning resident in such affairs is little more than that of a spectator. Moreover, in an area such as the Tulare Lake Basin there are practically no residents at all. Seventy-seven men, women and children reside within the boundaries of the Tulare Lake Basin Water Storage District, which encompasses 193,000 acres of land. Sixty-six of them either work for or are affiliated with Westlake Farms, Inc. which owns approximately 15,000 acres on the west side of the Basin.[21]

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[21]Defendant's Exhibit P, which is at page 85 of the Appendix lists the residents and shows where they reside.

The reason for this sparse number of inhabitants is due to the fact that the Basin is subject to recurrent flooding. For example, a major flood occurred in 1969 which inundated over 88,000 acres of farm land.[23] Because of the fact that the Basin is actually a sump, having no outlet, and the land of the Basin is a tight, impermeable clay, which prevents water from percolating through it, the flood waters remain on the land until they either evaporate or are used for irrigation on the surrounding farm land. As a consequence of the 1969 flood, which was one of the largest in history, some of the land remained under water until the summer of 1971, representing a loss of three years of crops for the area affected. In this vast area of practically no inhabitants, it is absurd to suggest that the nonlandowning residents, most of whom live many miles from each other, have the same interest in deciding whether a water storage district shall be formed as do the landowners within the area.

The State of California Acted Permissibly in Excluding Lessees From the Electorate.

Justice Browning dissented, in part, from the majority Opinion herein, which, although silent on the point, had the effect of affirming the exclusion of lessees from the electorate. Justice Browning would permit lessees, as well as landowners, to vote, but not mere residents, and he would not permit any vote to be weighted by the value of land owned or leased. How-

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[23]Appendix, Page 84.

ever plausible such a notion appears on the surface, it would be a nightmare to administer. Neither Justice Browning nor the Appellants make any distinction between one who leases 1,000 acres of land for a ten-year term and one who leases one acre of land under a tenancy at will. Presumably each, as a lessee of land, would be entitled to cast one ballot. If this is correct, there would be nothing to prohibit a large landowner from leasing his land to as many friends as he needed to control an election. These lessees in turn could contract with a competent operator, such as the actual lessee in present-day operations in the Tulare Lake Basin, to farm the land that they had leased at least until after they had voted at the election. Such a situation is fraught with the potential of too much mischief to insure any true stability in the electoral process. Since the term "lessee" is far from explicit, it is altogether reasonable that the California state legislature did not choose to grant the franchise to lessees.

However, California does recognize that there may be a divisible interest in land. A purchaser of land under an installment contract may cast one half of the vote allotted to such land if (a) the land is separately assessed on the county assessment roll; (b) a copy of the contract is filed with the secretary at least thirty days prior to the date of the election; and (c) the purchaser is not delinquent for more than six months in the payment of any sums required to be paid under the contract.[23]

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[23]California Water Code, Section 41006.

If the Franchise Is Limited to Landowners, It Is Permissible to Permit Each Landowner to Cast One Vote for Each $100 Worth of Property Owned by Him.

The next question is whether it is constitutionally permissible to permit each landowner to cast one vote for each $100 worth of property owned by him. Before discussing this question, Appellee suggests that such cases as *Gray v. Sanders*, 372 U.S. 368 (1963), and *Reynolds v. Sims*, 377 U.S. 533 (1964), cited on page 17 of Appellants' brief, which dealt with situations in which one person's vote was debased in relation to another's, usually by the manner in which an area of government was divided into districts, are no longer in point in this case. Based on the authority of these decisions, the lower court ordered the district ". . . to submit a plan to correct this malapportionment within six months of the date this decision becomes final."[24] The District did not appeal from this position of the judgment, and when this judgment is final, the District will be redivisioned in such a fashion that each vote for $100 of assessed valuation will have the same voting power.

The Appellants have excised quotations from the series of one man, one vote cases which they feel compel a reversal of the decision of this case. They pose the issue of weighted voting by reference to two recent state court decisions, stating at page 24 of their brief: "It is not possible to reconcile the reasoning and result in *Toltec*[25] with the reasoning and result in *Burrey*, . . ." This statement fairly tenders the issue.

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[24]Appendix, Page 107.

[25]See Page 15, *supra*, where Toltec is cited along with cases from other states.

The majority of the lower court disposed of *Burrey* by stating:

> "It [the District] performs no governmental functions of general concern to the populace and provides no service to the general public such as found by the court in *Burrey v. Embarcadero Municipal Improvement District* recently decided by the Supreme Court of California."[26]

Toltec, on the other hand, involved a limited purpose district, such as a water storage district, which does not concern itself with matters of general interest to all citizens. Therefore, analogizing to shareholders voting in a private corporation, the Supreme Court of Wyoming ruled that in such limited purpose districts, it is altogether proper for the legislature to permit the landowners to vote in proportion to their acreage.

The legislatures of most western states have authorized the creation of public and quasi-public districts dealing with water development, reclamation of land, drainage, soil conservation, and the like, and often the legislatures have permitted voting participation in such special purpose entities on the basis of one's ownership of land, the so-called "weighted vote." The question then is, assuming that it is constitutionally permissible to limit the franchise in water storage district elections to landowners, does the Equal Protection Clause prohibit weighted voting based upon land ownership?

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[26]In *Burrey v. Embarcadero Municipal Improvement District*, 5 Cal. 3d 671 (1971) the Supreme Court of California said that the government unit there under consideration was "* * * a small but growing city and lacks few of the powers normally held by municipal governments."

A fortiori, the Appellee contends that, if the state can permit a holder of title to land, even a corporation, to vote in a water storage district, it is within the power of the state in the exercise of its own judgment to determine that the objectives which it seeks to achieve can best be accomplished by weighted voting.

The majority below upheld weighted voting because ". . . the benefits and burdens to each landowner in the District are in proportion to the assessed value of the land, so permitting voting in the same proportion fairly distributes the voting influence."

Justice Browning judged the matter differently, stating:

> "Defendant has identified no compelling state interest in weighted voting in water storage district elections.
>
> "The statute itself weakens the contention that landowners would decline to participate in the formation of water storage district if each vote weighed equally. A majority of the *number* of landowners is normally required to form such a district (California Water Code Section 39400), and a majority of the *number* of landowners voting is required to approve a district project. California Water Code, Section 42550.[37]
>
> "Neither can it be said that the state's interest in intelligent and responsible elections is served by weighted voting. There is nothing in the record

[37]Justice Browning was not precise in stating that a majority of the number of landowners is required to form a district. The landowners must also own a majority of value of the land. California Water Code Section 39400 states that a majority in number of the holders to title to land irrigated or susceptible to irrigation from a common source by the same system of works who are also holders of title to a majority in value of the land may propose the formation of the district. Also 500 landowners owning 10 percent in value of the land may propose a district.

to support the assumption that a small landowner is less likely than a large one to possess the information and understanding of water development problems that is requisite to intelligent and responsible voting on the affairs of a water storage district. *Cf., Harper v. Virginia Board of Elections,* 383 U.S. 663, 688 (1966). And the landowner's interest in finding and implementing solutions to these problems is no less acute because his operation may be of greater economic consequence to him; and is small. Efficient production from his smaller acreage the lesser absolute share of the cost of district projects he may be required to bear may impose a greater burden."

With all due respect to the analysis of Justice Browning, the Appellee suggests that the California legislature could rationally and properly draw a different conclusion from the facts.

There are 307 landowners in the District. The pattern of land ownership varies greatly in different portions of the District. For example, in the lower portions of the Basin, the land is held, for the most part, in sizable ownerships. However, in the southeastern quadrant, in an area sometimes referred to as the Homeland District, there are many small ownerships. This pattern is due to the fact that some years ago there was some speculation in oil drilling in the area and small ownerships were sold by the promoters of this venture. These small holdings are all leased for farming to larger operators, who usually vote these small holdings by proxy.[38] One hundred eighty-nine landowners, representing 2.34

[38]Appendix, Page 85, Defendant's Exhibit Q.

percent of the acreage in the Basin, represent an absolute majority of landowners.

Furthermore, as the State legislature knows, district projects are apt to be multi-million dollar undertakings. For example, General District Project No. 4 involved the construction by the District of two laterals from the Basin to the California State Aqueduct. The capital cost of the laterals was approximately $2,500,000.[39]

Some facts concerning the relative cost of the Project to the three landowners, Thomas J. Amos, Ada Hornbeak, and Rose Catanz, mentioned on page 16 of the Appellants' brief as having only one vote compared with the position of the J. G. Boswell Company which cast 34,825 votes for Project 4, illustrate the reason why it was altogether proper for the California legislature to provide for weighted voting in water storage district elections. The foregoing allocation of votes was based upon the July 11, 1967 assessment roll, the one applicable to the Project 4 special election.[40]

The assessed valuation of Rose Catanz' 2½ acres of land was $10.00; of Thomas J. Amos' one-quarter of an acre, $20.00; and of Ada Hornbeak's eight-tenths of an acre, $60.00. Therefore, they were each entitled to cast one vote at the Project 4 election. The assessed valuation of the 61,665.54 acres of land owned by the J. G. Boswell Company was $3,782,-220.00, entitling that Company to cast 37,825 votes.

However, the assessment commissioners determined that the benefits of Project 4 would be uniform as to all 188,514.46 acres of land in the District affected by Project 4; and therefore assessed the capital cost of

[39]Appendix, Page 8.

[40]Defendant's Exhibit M, not included in the Appendix.

that project equally as to all of the acreage. As a consequence, each acre of land has to bear $13.26 of cost of the $2,500,000.00 capital expenditure for Project 4.

Therefore, Thomas J. Amos' share of the cost of Project 4 is $3.32; Ada Hornbeak's, $10.61; Rose Catanz', $33.15; and the J. G. Boswell Company's, $817,685.06.

Given these circumstances, the California legislature could well conclude that J. G. Boswell Company has a much greater stake in a district project than Thomas J. Amos, and that it is altogether proper that that Company cast 37,825 votes to Thomas J. Amos' one, where such a project would cost the Boswell Company $817,685.00 to his $3.32.

Therefore, while the California state legislature by weighted voting has made it impossible for a majority in numbers of landowners to impose a district project against the wishes of a majority in value of the land, it has also protected the small landowners on the downside by providing that a majority in *value* cannot enact a District project over the objections of a majority in *number* of the landowners.[41] This type of electoral scheme for District Projects, which is the only means by which the District can accomplish its goals, adequately protects the interests of the small landowners by giving them the power to prevent the imposition upon them of burdensome assessments.[42]

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[41]California Water Code, Sections 42355-42550.

[42]As noted above, 189 landowners representing 2.34 percent of the acreage in the District represent an absolute majority of the landowners. In this connection it should be noted that while the J. G. Boswell Company cast 37,825 votes for General Project 4 on Official Ballot "A" [Deft. Ex. R] while Thomas J. Amos was only casting 1 vote on Official Ballot "A", both the J. G.

By the same token, this voting procedure recognizes that, since these projects are for the benefit of the lands in the District and will be paid for by each landowner in proportion to the value of his land, it is essential that a majority in value agree that a project should be adopted. Otherwise, the large landowners could not be induced to join in the formation of a water storage district. Stated differently, it would be rather absurd to assume that the J. G. Boswell Company would be willing to participate in the affairs of the Tulare Lake Basin Water Storage District if Thomas J. Amos and 188 of his friends could at their whim visit a $817,685.00 assessment upon that Company.

The plain truth is that contrary to Justice Browning's statement, Thomas J. Amos does not have the same interest in the efficient management of water as does the J. G. Boswell Company. However, there is no gauge by which to measure the degree of interest or understanding of water development problems between landowners. On the other hand, the burden of paying for the cost of district projects is in proportion to the value of one's land and can be determined with precision. Therefore, as the majority said, "permitting voting in the same proportion fairly distributes the voting influence."

In addition to the economic realities which justify weighted voting based upon apportioning the vote in proportion to the burden, there are other reasons which dictate that weighted voting is the only practical way of distributing the franchise. For example, if one would

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Boswell Company and Thomas J. Amos only cast 1 vote on Official Ballot "B" [Deft. Ex. S]. With respect to Official Ballot "B" both J. G. Boswell and Mr. Amos had the same voting strength.

accept the Appellants' argument that landowner voting is proper, but each landowner should have the same voting power, then, in the Tulare Lake Basin Water Storage District as it exists today, whoever holds the proxies of the collection of small landowners in the Homeland District who came into land ownership through speculating in oil, can effectively control the District elections.

No doubt such a situation would be intolerable to some of the larger landowners, quite possibly even the Salyer Land Company. If so, there would be nothing to prohibit that Company or any landowner from selling ten dollars worth of land to as many relatives, employees, or other captive landowners as he felt necessary to win an election. His neighbor, fearful of such electoral tyranny, could offer more people land in five dollar units, with the process repeated until land ownership in the Tulare Lake Basin would be in such small units that they couldn't be seen by the naked eye.

The fact that such an absurd situation as that noted above would be possible in the absence of weighted landowner voting establishes the good judgment of the California legislature in drawing the Water Storage District Act the way it did. One vote for each $100 worth of land is a fixed measure of voting power. It is the same whether the land is leased under a long or short-term lease; whether the land is owned by a corporation, partnership or an individual; whether the owner is actively interested in District affairs or entirely indifferent to them.

Finally, the experience of this District, where all but one of its projects were enacted by a unanimous electorate, indicates dramatically that multi-million dollar water projects are not apt to be undertaken, in the absence of a general consensus of all landowners.

One good test of an electoral system is how it works in actual operation. The projects of the Tulare Lake Basin Water Storage District have accomplished a great deal toward an improvement in the management of water for the landowners in the District. The objective sought to be accomplished by the legislature have been achieved under the Water Storage District Act. Therefore, limiting the franchise to landowners, who vote in proportion to the value of their land, has indeed furthered a compelling state interest.

Conclusion.

Following the principles established by this Court in *Sailors and Kramer,* by the California court in *Schindler* and *Burrey,* by the Nebraska court in *Toltec,* by the North Dakota court in *Wallegham,* and by the Louisiana court in *Hebert,* it is clear that California Water Code Sections 41000 and 41001, which permit only landowners to vote and give them one vote for each $100 of assessed valuation, do not violate the equal protection of law guaranteed by the Fourteenth Amendment of the Constitution insofar as applied to elections of the Tulare Lake Basin Water Storage District. Accordingly, and as stated in *Schindler,*

> "Absent constitutional infirmity in the existing statute, there is no justification for judicial fashioning of the alternative rights demanded."

September 1, 1972.

Respectfully submitted,

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Counsel for Appellee.

Service of the within and receipt of a copy thereof is hereby admitted this 4 day of September, A.D. 1972.

Proof of Service Enclosed